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BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of: WELDON BEALL, an unmarried man, WELDON LLC, an Arizona limited liability company, Respondents.	DOCKET No.: S-20792A-11-0114 **RESPONDENTS' LEGAL MEMORANDUM RE: ARS §44-1844(1) EXEMPTION**

Number Of Offerees.

It is axiomatic that the greater number of offerees, the more likely that an offering of securities is truly public in nature, and conversely, the smaller the number, the more likely that the offering is private. **(People v. Humphreys,** 4 Cal App3d 693, 84 Cal Rptr 496 (1970). The significant factor is the number of offerees, not the number of purchasers. In our case, Beall offered his closest friends, numbering only 10 persons.[1] Offerees and investors in this case are identical. Had Beall made them incorporators pursuant to ARS §44-1844(10) – as I would have suggested – the special Arizona exemption for 10 or less incorporators would make that offering exempt to begin with. That omission alone does not qualify to transmute an otherwise "private offering" into a public offering. The spurious facts introduced by the ACC in its Notice of Opportunity for Hearing (March 16, 2011) never amended -- is fairly incompatible with the differing evidence adduced at the Hearing. The ACC proved that Beall's offering is nothing more than sales of investment contracts in a private transaction to a small, select, relatively insignificant number of persons...friends, co-workers and a single next door

[1] We are disregarding Kenneth Malone Hood (introduced at Trial as Exhibit S-21 to which Respondents timely objected) – as information about S-21 came to Respondents one (1) day prior to the ACC hearing.

neighbor. All of them knew Beall well -- for years -- as a good friend. Beall was always available to answer any questions they posed about Beall and/or the LLC and/or the Patent. But everyone knew already that Beall had nothing of value to sell from Weldon, LLC but his "idea" to openly display casino cash, and the Patent. Beall owned nothing of real tangible value, except for the Patent. Until the USPTO issued the Patent, he had no way of valuing his "idea." That was certainly clear to all, even the two complaining ACC witnesses.[2] They all knew the investment contract was not truly an investment in the usual sense. It was more like a gambling bet as all investors affirmed under oath at the hearing; hardly an "investment" in the traditional sense. All offerees knew that Weldon, LLC itself was a "craps shoot," and therefore the odds were stacked against investors getting rich from the beginning. Beall's friends paid their money just like buying a lottery ticket, knowing they would most likely lose it all.

Moreover, the original ten offerees did not come into the picture in a single successive 12 month period. They had been garnered from February, 2007 to November 2009, averaging at just under five (5) offerees per year. Accordingly, we ask this tribunal to consider whether there had really been a "public offering" at all in 2007, when only 6 offerees/investors put up their money? Or was there a public offering instead during the year 2007, when only another 3 offerees/investors came into the picture? What about 2009, when only 1 new investor wrote a check? Did that constitute a public offering? Or do we add the aggregate 3 years together? The question is: *In which of those years – if any – did Respondents make a public offering of securities?*

If there were only 6 close friends in the aggregate, from 2007 to 2009, would that in and of itself have constituted a "public offering?"[3] This is precisely why the trier of fact is required to analyze all circumstances in order to make that all important determination referable to ARS §44-1844(1). In calculating units of time, securities statutes often refer to a 12-month measurement of time. Such is the case in computing unregistered sales of securities under

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[2] Lisa Cowette-Eagle is disregarded as not being an investor and therefore without standing to sue, and Wood must be completely disregarded as an untimely disclosure.

[3] [Note]: the ACC's Notice of Opportunity for Hearing of March 16, 2011 at paragraph 5, stated there were only 6 offerees.

Regulation A. The '33 Securities Act, requires sales during the 12-month prior period be deducted from the maximum allowable dollar volume of sales permitted under Regulation A.

Both New York and Colorado courts have recognized these concepts by taking into account in particular that when offerees/investors had been neighbors and friends over the course of several years, and where the size of the offering was consequently small, without any advertising, the law was correct to label that's a non-public offering. The courts in Colorado and New York found this constituted a private rather than a public offering. (**People v. Morrow** 682 P.2d 1201 (Colo App 1983); **People v. Michael Glenn Realty Corp,** 106 Misc 2d 46, 431 NYS 2d 285 (1980).

Had Beall prepared a disclosure document for potential investors, he could only tell them that he had "nothing" to offer except his far fetched "idea" to make money by displaying money, and later a patent, but nothing more. But all investors knew that going in. The extremely speculative nature of the "product" offered by Beall was like the hula hoop, simplex and easy to understand. Beall had no reliable financial or other projections and offered none. It was therefore each investor's imagination that set the parameters for return on his particular investment as stated in each of the respective investment contracts.

Nature Of The Offering.

Nor are the securities in Weldon's private offering selling shares of stock or other instruments created for post offering trading. Investment contracts containing at best an illusory promise to pay enormous returns – but only if the venture successfully sells Beall's Patent – were purchased by the investors for a long term investment, as they contained no outside date for payout, no maturity date.

Nor did Respondents use commission agents to reach the 10 offerees/investors; and all contracts came only after face-to-face negotiation between Beall and each of his 10 offeree/investors. It is common knowledge that without the good offices of a broker-dealer, no post offering trading can easily occur, if even then. That important characteristic of the public offering is also therefore missing in Beall's offering. It follows that each investor bought into Weldon, LLC, for investment purposes only and not with a view to further distribution. In fact, nothing in the contract connotes that it may be assigned or transferred or that the LLC would recognize any assignment. Nor does it contain a date for performance by the Issuer. Not even

were they promissory notes, as these were not negotiable instruments defined in the Uniform Commercial Code.

Perhaps the most important question to be answered in defining any public offering is who are the potential investors and the corollary question: What will they learn from a registration statement to help them make an intelligent investment decision? Weldon's prospectus –assuming one for argument sake -- could only say that Beall's idea was generally untested, that no prototype existed, and the Issuer was broke. But every investor already knew that too! On that basis alone, potential investors did not need the protection afforded by a registration statement. If so, then why register? Only because it's required for a public offering only under the law. But Weldon, LLC was a one-man-show. Investors became only silent partners with Beall, which is the very essence of a limited liability company – one man rule. Everyone also knew that! By reason of their joint knowledge about the affairs of the Issuer/Respondent, investors did not require the kind of discreet information always included in a registration statement in order to allow investors to make an informed decision.

Only where pertinent Issuer information is not readily available to investors does registration becomes an important element in the decision to purchase securities. Nothing about the company or its patent had been withheld from investors by Beall. In fact, had Beall actually filed a registration statement, a necessary exhibit to be filed would have been the phantom Seminole Contract that Mays and McCullough insisted was shown to them by Beall. That no such contract is proven to have existed -- to this day -- would make it impossible to file such a contract as an exhibit, thus shattering Mays and McCullough's positions vis-à-vis the existence of a phantom Seminole Contract. In that respect a registration statement containing no contract would actually refute their testimony.

Of course where a particular offering is complex and convoluted, or where an expert's opinion is required, a registration statement serves a well defined place in the sale of securities. Not so here, where the issue was singular in nature, to display millions for a defined purpose. Nothing could be more simplex than that "idea." Making it work in practice is something that a registration statement could not augment.

The State's Witnesses.

Jim Mays and Steve McCullough were the only two investors to come forward to testify at the hearing on behalf of the State – out of 10 investors. Yet Mr. Brokaw called all 10 according to him that is, those who would even care to speak to him. As information about a phantom 11th investor named Kenneth Malone Hood, was exchanged with Respondents only one (1) day before the hearing, Respondents timely objected in writing to any documentary or testamentary evidence regarding Wood. That's leaves only 10 legitimate investors for Mr. Stern to analyze, within the 10 person exemption in ARS §44-1844(10) that we ask be invoked. Still they are the organizers. The courts have not yet decided whether 10 members of an LLC also qualify for §44-1844(10) treatment, though logic certainly points in that direction. There is nothing sacrosanct about a corporate entity as LLC's have similar characteristics and 1843(1) precedes the LLC concept.

What did Mays and McCullough fabricate that all other investors under oath refused to corroborate in their testimony: That Beall had showed them a written contract for $51 million with the Seminole Indian Nation in Florida, (or any written contract from anyone else). The reason, as Beall testified: "There wasn't any!"

All investors who testified, including Mays and McCullough, were equally certain about the following aspects of the offering:

a) Beal was a truthful person whom they had known for many years as friends or co-workers;

b) Beall was not gainfully employed before or after investors put up their investment capitol;

c) Beall's sole source of living expenses came from Weldon's investors from the start;

d) only Beall's self imposed limitations were put upon Beall's cost of living expenses, namely, that they be reasonably related to the sale of Beall's Patent – including keeping Beall on the job;

e) Beall worked energetically to sell his invention/Patent which had been assigned o Weldon, LLC; and although later in time than originally announced, that had no negative effect on the efficacy of the Assignment;

f) Beall has not been able to sell the invention/Patent to date;

g) Beall had in an amateurish fashion accounted for all money paid in as investment funds as well as all money taken out by Beall, although no one had ever asked for on accounting from Beall – not even Mays and McCullough;

h) of all investors, only Mays and McCulllough had filed complaints with the authorities to get their money back;

i) no civil lawsuits had ever been filed against Beall by any investors to date;

j) no investor complained to Beall about how Beall spent investors' money for his own and Linda McNelis' living expenses;

k) all investors knew Beall was also supporting his live-in-partner of long time, Linda McNelis;

l) only McCullough and Mays of the 10 investors claimed Beall had a multi-million dollar contract with the Florida Seminole Indians to sell his invention/Patent, and only Cowette-Eagle, a non-investor without standing to complain, but with a big expectation, said she actually saw the Seminole contract in written form, complete with Seminole signatures, but even the Seminoles insisted no such contract existed; and her testimony therefore is not believable;

m) only Mays and McCullough of the 10 investors claimed to have seen a Seminole contract, yet: (i) they never got a copy; (ii) disputed between them the number of pages (from 9 pages to 20 something pages); (iii) disputed the identity of the phantom signatories; (iv) swore that they read all pages; and (v) yet could not remember any single term or condition of the contact other than $51 million;

n) the investor Robert Brown who accompanied Beall to Nevada knew how diligently Beall worked to sell the Patent;

o) Beall never produced a financial statement, never produced a disclosure document or brochure, never advertised the offering, never paid or received any sales commissions in connection with investments received by, and made NO false or misleading statements about the offering itself (other than as falsely claimed by Mays and McCullough in subparagraph (m) above) which Beall disputes as outright fabrications, and that makes it not a public offering;

p) Beall received no wages, salary or other direct remuneration for all his hours devoted to Weldon, LLC, nothing but living expenses; and,

q) Beall must be entitled to some remuneration for his time and expenses.

[Note:] If the testimony from Mays and McCullough and Cowette-Eagle is found to be perjured, it should be stricken entirely.

Agreement.

Given that Beall is entitled to all reasonable inferences from the evidence presented to the Commission at this time, it is only fair to point out the following:

1. Sophistication. In securities litigation, the term "sophisticated" investor" means a person knows how to evaluate the risks and rewards of the offering. The hearing disclosed discreet testimony from investors directly as well as from Beall. Most of the investors are automobile sales persons who by experience and training have been exposed to much about the world of finance, and money matters in general as pertains to the second biggest investment according to government reports. Particularly, selling new and used motor vehicles takes brain power as it is often a game of wits between seller and buyer, even if not related directly to investment strategies of the kind involved here. All knew the risks involved – that they could lose their entire investment as this particular venture was really a "craps shoot." The money invested was more in the nature of "gambling money." Every alert person knows that the higher the return on investment, the greater the risk. That's when they bargained for tens of thousands, or millions in exchange for a relatively small investment. Only **if** the venture was successful and there were profits to be shared would investors be made whole. Just like in an oil drilling venture.

2. Misrepresentations. There could only have been verbal or oral misrepresentations, if any misrepresentations were made, as there was NO disclosure documents, no brochures, no accountings, and no financial statements or the like. And everyone except for Mays and McCullough swore under oath that nothing had been stated orally that was untrue, except as that related to the Seminoles. Like Grimm's Fairy Tales, Mays and McCullough concocted a tale about a fabulous Seminole contract, perhaps only to assuage their own disappointments. They heard what they hoped had been said by Beall.

3. Seminole Contact. The time sequence of events indicates that even if, for argument sake, there was in fact a Seminole contract, it had to have been disclosed to Mays and McCullough BEFORE they put up their money for a Weldon, LLC investment contract to

constitute an actionable misrepresentation. Otherwise that information would be irrelevant as it could not possibly otherwise influence Mays & McCullough to become investors in Weldon, LLC. Yet the facts as disclosed in Exhibit S-19 prepared by the ACC indicates that only Mays put up his money all three times ($5,000 on July 28, 2009; $15,000 on July 31, 2009; and, $10,000 on November 13, 2009) AFTER the March 31, 2009 Patent had been issued.

McCullough on the other hand made just 3 investments before March 31, 2009 and only two investments ($3,000 on May 15, 2009 and $4,500 on July 16, 2009) AFTER the Patent had been issued. However, information about the Patent could not have lured McCullough – as it had Mays -- into making McCullough's first 3 investments. All the other 8 investors invested BEFORE March 31, 2009 and before any contract with the Seminoles had been made.

Apparently, Mays was induced into investing because of the Patent not by any talk of a Seminole contract that preceded the Patent issuance. That reasoning is fortified by Beall's testimony that his first introduction to the Seminoles came in mid-March when he first learned from them that his Patent was going to be issued by USPTO's public announcement and further that the Seminoles had their eye on that patent for use at their Hard Rock Florida casino. The Patent is in fact dated March 31, 2009. (Exhibit B-10 later changed to R-10).

All investors, other than Mays and McCullough put their money at risk well before March 31, 2009 – with nothing further invested by any of them from and after December 15, 2008, when Michie made his last investment of $7,000. Quite obviously $7,000 in 2008 was not based upon any Patent issuance. All investors but Mays were willing to risk that the Patent would never be issued. Not so Mays. McCullough invested twice more only after March 31, 2009. Mays testified that he invested only after the Patent was issued. McCullough was not quite as cautious. For Mays, his investment was a sure thing, only dependent upon when the Patent would be purchased for Casino operations. Not by whom. And although Mays and McCullough are disappointed, they both still have high hopes that the Patent will be sold to make their dreams come true.

If in fact there were a Seminole contract known to all investors, what would have stopped them from mortgaging their homes to invest even more extensively in Weldon, LLC? Beall still was in need of cash at that time. Clearly there was no Seminole contract – just part of

Mays and McCullough's continuing fantasy about getting rich. How come the investors who did testify FOR Beall never were told of a Seminole contract? The answer: Because Beall would never lie to his investor/friends (including Mays and McCullough).

4. The USPTO. Only McCullough and Mays invested anything AFTER Beall's Patent had been issued by USPTO, thus eliminating all risks previously taken by all prior 8 investors -- that a Patent may never be issued. Mays and McCullough were only betting that the Patent could be sold, a much lesser risk post Patent issuance. It was as if McCullough and Mays believed they had a sure thing, according to their own testimony.

5. Big Returns. McCullough called the potential return on investment "awesome." And so it was, but there was also inherent risks that always attend awesome returns. An automobile salesperson certainly knows that much generally about investing.

6. Long Standing Relationships. The strong friendships established between Beall and the investors is poof positive that they trusted Beall, and their trust had not once been violated. Only Mays and McCullough's of all investor gave specious testimony about an alleged Seminole contract of which (i) they could not agree as to the length and number of pages in the contract; (ii) the number of and identities of signatories to the alleged contact; (iii) not a single discreet term or condition of the alleged contract; (iv) exact amount to be paid; (v) date for payment by the Seminoles; (vi) all other terms usually found in any contract—especially one for $50 million or more; (vii) penalties for non-performance.

7. Cowette-Eagle and Asche. Lisa Cowette-Eagle was Bruce Asche's live-in girl friend, but not his business partner. She had no claim to Asche's investment contract as none of her money went to purchase the investment contract. So why did she have such angst – evident from her transparent hostility toward Beall? She stated that without a fully performing contract she was stripped of her dream for the future with Bruce and her. She wanted the payoff now and envisioned a contract worth millions assuring them of a long lasting romantic relationship. But that was realistic only if there were a real Seminole contract. Her testimony is fraught with dangerous accusations against Beall which only she – not Bruce Asche – believed were true. She swore that she read each page of a lengthy written phantom Seminole contract, of which she could not relate under oath a single term except for $51 million. On its face this makes her testimony ludicrous. Beall swore that no one had ever proposed a buy-out sum to

mature on an October 21st pay day as Lisa had sworn. Without concrete proof otherwise, it's not fair to call Beall a liar. Cowette-Eagle's testimony is not supported by 8 other investors who were not summoned by the ACC to testify.

8. Limitations. No investor testified about imposing any restrictions upon Beall's spending and never requested a financial statement or audited the LLC's books.

If true, why would Beall keep the Seminole contract a secret for ONLY McCullough and Mays (plus Lisa Cowette-Eagle) to view. If true, why not instead schedule a party by Beall to celebrate making them all millionaires?

9. Questionable ACC Allegations.

a) The ACC Notice of Opportunity For Hearing ("Hearing Notice") at paragraph 12 indicates that Beall "...showed only a copy of a "letter" from the casino to the investors..." It is evident none of the testimony sustains that allegation. Firstly only two investors said they saw a "contract" not a letter and Mays' and McCullough's testimony was even inconsistent with one another, itself giving the impression of fabricated stories. And Lisa Cowette-Eagle contradicted both Mays and McCullough when describing the Seminole Contract. Such testimony from neither of them can therefore be trusted.

b) Paragraph 14, Hearing Notice allegations were not sustained. Only McCullough's contract of the ten contracts was backdated contrary to the ACC's allegations. Why would Beall offer to back date a contract for McCullough? That could only put Beall in jail without any concomitant benefit to Beall? It's not reasonable to believe that Beall is just plain stupid enough to that. And even if Beall suggested back dating the contract, that does not violate ARS §44-1991, of which he is accused by the ACC. This is not an IRS trial, or a trial about IRS transgressions.

c) Paragraph 23, Hearing Notice, alleges "scheme and device...untrue statements ...and fraud violations (ARS §44-1991) but the only issue presented at the hearing was whether a "Seminole contract", not a letter, was presented to any investors. Only the investors Mays and McCullough said "Yes." All other investors contradicted Mays and McCullough, namely: Robert L. Brown, Robyn Murdick and Kenneth L. Graham. Of course,

these last named investors also contradicted Lisa Cowette-Eagle, a non-investor with an obvious grudge against Beall. Weldon Beall explained that he had "spoken" to the Seminoles. That is what he told investors. Beall did not stretch his explanation to include having agreed upon a $51 million Seminole contract. Yes...Beall testified he would not sell for less than millions of dollars, enough to make the required pay off to all investors and leave a remainder of additional millions left over for Beall. To perform in 100% fashion does not require a $51 million from the Seminoles. Note that investors could only expect the sums set forth in their respective contracts, and nothing more.

d) Paragraph 23 (a), Hearing Notice, states Beall misrepresented a sale of the "money vault...for $51,000,000..." Not true that such representation was made. Only the "Patent" was up for sale, not the vault – and neither was actually sold, nor was that ever represented by Beall. But without misrepresentations of a verbal nature, there had to be misrepresentations of a written nature to invoke §44-1991. No writings came from Beall according to all who testified. Only a phantom Seminole contract that not one witness was able to accurately describe, or agreed upon as to an exact description was testified to. Therefore, only Beall's verbal communications could qualify for the misrepresentation element of ARS §44-1991. If the burden be on the state to prove allegations of fraud by clear and convincing evidence, the ACC has failed to carry its burden of proof – that is, unless ALL contrary evidence, from Beall, Graham, Brown and Murdick is discarded by the hearing officer as utter fabrications.

Respondents do not dispute the sale of unregistered Weldon, LLC investment contracts, only that:

a) they were not sold in a public offering and the offering is therefore exempt under **ARS §44-1844(1)**; and,

b) none of the "credible" evidence sustains a preponderance of evidence to support a finding of "fraud" comprising violation of ARS §44-1991.

c) Investigator Brokaw's testimony does not support such a finding of fraud. In fact, he could not obtain admissions from any of Respondent's witnesses, and the only two adverse investors he could muster were Mays and McCullough. Brokaw did not even talk to

Bruce Asche and other investors who absolutely declined to talk to him or testify or vilify Beal though encouraged to do so by Brokaw. Because Beall did nothing to merit attention by the ACC according to the people who put their money on the line and had the most to lose. They could relate no misrepresentations.

Besides Mays and McCullough, and the tainted testimony of Cowette-Eagle, no one could corroborate seeing a Seminole contract or hearing Beall talk about the Seminoles as a *fait accompli*. Strange? Not really! How can any truthful person describe a phantom contract that exists only in another's mind, or exists only on Mays and McCullough's wish list, or as a fantasy while day dreaming, or if one is in the pursuit of a refund?

The fact is that Beall has no money to respond in damages to his investors if the finding of the tribunal is against Beall; nor can Beall pay a penalty to the state of Arizona. But Beall is still working to sell his Patent, which the testimony indicates to have real value for a gaming casino in Las Vegas or other gaming mecca.

Argument.

There was no need for Beall to disclose the existence of a Seminole contract that evolved after the investors were already financially committed. Almost all investment funding had already been collected by Beall way before the Seminoles even came into the picture in mid-March 2009.

On the basis of the foregoing, we ask that all ACC requests for relief be denied.

RESPECTFULLY SUBMITTED this 15th day of November, 2011.

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